

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION**

C&J ASSOCIATES PEST CONTROL,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:06-cv-884-MEF
)	
BOB RILEY, et al.,)	
)	
Defendants.)	

MOTION TO DISMISS OF DEFENDANTS NABERS AND MAIN

COME NOW the Defendants, DRAYTON NABERS, JR., formerly Finance Director for the State of Alabama, individually and in his official capacity, and JAMES MAIN, as Finance Director for the State of Alabama, individually and in his official capacity, by and through their undersigned counsel, and move this Honorable Court to dismiss all the Plaintiff's claims against them on the following grounds:

1. The Complaint fails to state a claim against Defendants Nabers and Main upon which relief can be granted;
2. The Plaintiff's claims are barred by the statute of limitations;
3. The Plaintiff's federal law theories are barred by the immunity afforded by the Eleventh Amendment to the United States Constitution;
4. The Plaintiff's state law theories are barred by the sovereign immunity under the Constitution of the State of Alabama;
5. The Plaintiff's claims under federal law against Defendants Nabers and Main in their individual capacities are barred by qualified immunity;

6. The Plaintiff's claims under state law against Defendants Nabers and Main in their individual capacities are barred by State-agent immunity;

7. The Plaintiff's claims against Defendants Nabers and Main for declaratory and injunctive relief are nonjusticiable; and

8. The Plaintiff's claim for damages under the state competitive bid law is prohibited as a matter of law.

(Defendants' brief in support of this motion will be filed contemporaneously herewith.)

WHEREFORE, the above-cited grounds considered, Defendants Nabers and Main request this Honorable Court to enter a judgment in their favor dismissing all the Plaintiff's claims against them.

Done this 17th day of November 2006.

Respectfully submitted,

/s/ Richard H. Cater

Richard H. Cater

Bar Number: ASB-0782-C42R

General Counsel, Finance Director's Office

Attorney for Defendants Nabers and Main

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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Respectfully submitted,

/s/ Richard H. Cater

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